

EUGENE CLAYTON AND JEANETTE CLAYTON, as Co-Executors of the Estate of VERNON PAASCH, deceased, and on behalf of Wrongful Death Heirs,)	No. CV05-5829 JKA
)	
)	
)	JOINT STIPULATION AND MOTION TO STAY
Plaintiff,)	
)	and
vs.)	
)	ORDER GRANTING STAY UNTIL FEBRUARY 2, 2007
NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY, and DOES 1-300,)	
)	
)	
Defendants.)	

On January 30, 2006, Defendant NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY, filed Document 7, *Notice to Tag Along Action* regarding the pending Multidistrict Litigation (“MDL”) in the Eastern District of Pennsylvania, seeking among other things, to move Jurisdiction of this matter to that District.

On July 29, 1991, the Judicial Panel on Multidistrict Litigation (“JPML”) entered an order transferring all asbestos personal injury cases pending in the federal courts to the United States District Court for the Eastern District of Pennsylvania, for coordinated pretrial

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proceedings pursuant to 28 U.S.C. § 14097. That order also applies to “tag-along actions,” or actions involving common questions of fact filed after January 17, 1991. Such actions are to be transferred to the eastern District of Pennsylvania as part of MDL 875, for coordinated pretrial proceedings.

The JPML has held that a district court has the authority to stay pending a transfer order. *In re Asbestos Products Liability Litigation*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001) (“[T]hose courts concluding that such issues should be addressed by the transferee judge need not rule on them, and the process of 1407 transfer in MDL-875 can continue without any unnecessary interruption or delay.”).

To date, the Clerk of the JPML has not entered a *Conditional Transfer Order* pursuant to JPML Rule 12(a) or filed an order to show cause why the action should not be transferred, pursuant to JPML Rule 13(b).

It is likely the dates set forth in the *Minute Order* (Document 4), including the deadlines imposed by Federal Rules of Civil Procedure 26, will come to pass before the Clerk of the MDL Panel acts.

In addition, it has come to the attention of counsel that the Judge assigned to hear the cases pending in MDL 875, the Honorable Charles R. Weiner of the Eastern District of Pennsylvania, has recently passed away and that the Clerk of that Court has reported a backlog in cases transferred to that Court by the MDL panel.

The parties make this Motion on the grounds that a stay of this action would (a) promote judicial efficiency, (b) allow consistency in pretrial rulings, and (c) be most convenient to the parties.

Due to the pending action by the Clerk of the MDL Panel, the following parties hereby STIPULATE to and respectfully request the Court VACATE its *Minute Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement* filed January 3, 2006 (Document 4) and that the Court issue an Order STAYING this action pending the outcome of the MDL Panel’s decision on the merits of the transfer.

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2 - JOINT STIPULATION AND MOTION TO STAY (CV05-5829 JKA)

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1 Dated: February 1, 2006

BRAYTON ♦ PURCELL LLP

2 */s/ Zachary Herschensohn*

3
4 By: _____
5 Scott Niebling WSBA 25186, OSB 04494
6 Zachary Herschensohn WSBA 33568
7 Attorneys for Plaintiff

8 Dated: February 1, 2006

PERKINS COIE LLP

9 */s/ James H. Gibley*

10 By: _____
11 James H. Gibley, WSBA 17000
12 James F. Williams, WSBA 23613
13 Attorneys for Defendant NEWPORT NEWS
14 SHIPBUILDING & DRY DOCK
15 COMPANY

16 **ORDER**

17 PURSUANT TO STIPULATION, THE STAY REQUESTED IS GRANTED UNTIL
18 FEBRUARY 2, 2007. THE CLERK IS DIRECTED TO NOTE THE MATTER FOR
19 STATUS REVIEW ON JANUARY 25, 2007 FOR THE PURPOSE OF CONSIDERING THE
20 NEED TO EXTEND THE STAY.

21 Dated: February 3, 2006.

22 /s/ J. Kelley Arnold
23 J. Kelley Arnold
24 United States Magistrate Judge